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IN THE

# Supreme Court of the United States

**Term, 19**

No. [redacted] 1959

INTERNATIONAL LATEX CORPORATION,

*Petitioner,*

*v.*

THE WARNER BROTHERS COMPANY,

*Respondent.*

## PETITIONER'S REPLY

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IN THE

# Supreme Court of the United States

Term, 19

No. 992

INTERNATIONAL LATEX CORPORATION,
*Petitioner,*

*v.*

THE WARNER BROTHERS COMPANY,
*Respondent.*

## PETITIONER'S REPLY

Respondent misrepresents that the petition here seeks review of questions of fact. Nothing could be further from the truth.

The petition seeks review of an important question of patent law and it is based on the ground that the Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

The arbitrary denial by the Court below of the benefit of the doctrine of equivalents in such cases as this one is in substantial effect a denial of the doctrine itself. The decision therefore sets a precedent having the potentiality

to confuse the law with serious consequence to most existing patents. The decision therefore goes beyond the interest of the particular litigants here involved.

It seems to us that respondent tacitly acknowledges the existence of this conflict of law by the complete avoidance, in its brief, of any discussion of this question although it is the entire basis of our petition.

Petitioner fully accepts the fact findings of the lower court.

As to the fact of patentability, both the courts below found satisfactory evidence that a significant invention had been made and in vigorous comments told why (District Court, I, 382a-384a; Court of Appeals; Addendum to Petition, 104-5a and 110-111a and see also Note 1, Appendix to Petition).

As to the fact of equivalency, contrary to the respondent's suggestion (Br. p. 10), the Court of Appeals withheld its approval of the District Court's finding. It recognized equivalency as a matter of function and purpose but denied to the claims the benefit of the doctrine of equivalents on the broad ground that claims restricted in the Patent Office are not entitled to its benefit, even though the matter sought to be reached was nowhere included in the Patent Office discussion (see our petition pp. 9-10).

This is the ground upon which Petitioner respectfully urges a review by this Court.

Respectfully submitted,

WILLIAM H. DAVIS
*Attorney for Petitioner*

New York, N. Y., July 1, 1960.